

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B06

PLR-134406-13

Date:

December 19, 2013

Legend

Target =

Acquiring =

X =

Regulator =

Business A =

LLC =

a =

b =

c =

d =

State A =

Date 1 =

Date 2 =

Date 3 =

Dear :

This letter responds to your July 19, 2013 request for rulings regarding certain U.S. federal income tax consequences of a proposed transaction. Additional information was submitted in a letter dated December 18, 2013. The information provided in the request and in subsequent communications is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Summary of Facts

Target is a State A corporation that is a holding company. Target has one class of outstanding stock. Target owns a percent of the outstanding stock of Acquiring. The Acquiring stock is Target's primary asset, consisting of more than b percent of the gross and net fair market value of Target's assets as of Date 1. As of that date, Target's other assets consisted of cash and various other non-operating assets.

Acquiring is a State A corporation that has two classes of common voting stock outstanding, Class A Shares and Class B Shares. The Class A Shares and Class B Shares are identical, except with respect to voting rights. Acquiring is a holding company that owns all of the stock of corporation X, which is directly involved in Business A. Both Acquiring and X are subject to regulation by the Regulator.

The Regulator has informed Target that it would be subjected to regulatory oversight which, Target believes, would result in significant administrative burden without any additional business benefit.

On Date 1, Target formed LLC, an entity disregarded as separate from Target (thus, treated as a branch or division of Target) for U.S. federal income tax purposes under Treas. Reg. §§ 301.7701-1, et seq., and contributed all of its assets (other than the Acquiring stock and cash) to LLC in exchange for all of the membership interests in LLC and LLC's assumption of certain of Target's liabilities (collectively, the "Contribution"). At the time of the Contribution, LLC agreed to indemnify Target against any potential contingent liabilities of Target.

On Date 2, Target distributed to its shareholders, pro rata, all of the membership interests in LLC (the “LLC Distribution”) and cash of \$c (the “Cash Distribution,” and collectively with the LLC Distribution, the “Distributions”). Target and its shareholders treated the Distributions as dividends within the meaning of section 316. Following the Distributions, the only remaining assets of Target are \$d in cash and Acquiring stock.

On Date 3, the shareholders of Acquiring voted to amend its articles of incorporation to provide the Class B Shares with the same voting rights as Class A Shares. After this amendment, the Class A Shares and the Class B Shares have identical rights.

Proposed Transaction

The parties have proposed the following transaction (the “Reorganization”):

1. Target, its shareholders, and Acquiring will adopt a Plan of Reorganization to undertake steps 2 and 3, below.
2. Target will transfer all of its shares in Acquiring (the “Old Acquiring Shares”) to Acquiring in exchange for an equal number of newly issued Acquiring Class A Shares (the “New Acquiring Shares”). Acquiring will issue the New Acquiring Shares in the names of Target’s shareholders in the same proportion that such shareholders own their Target shares. Acquiring will not assume any of Target’s liabilities.
3. Target will distribute pro rata all of the New Acquiring Shares to its shareholders, and will dissolve under state corporate law.

Target will use its \$d cash to pay its transaction-related expenses, and will distribute pro rata its remaining cash, if any, to its shareholders (the “Residual Cash Distribution”).

Representations

The following representations have been made regarding the Reorganization:

- a. The fair market value of the New Acquiring Shares to be received by each Target shareholder in the Reorganization will approximately equal the fair market value of the Target stock surrendered in the exchange.
- b. Target’s shareholders will receive solely New Acquiring Shares and the Residual Cash Distribution, if any, in exchange for their Target stock.

- c. Acquiring will acquire the assets of Target in the Reorganization solely in exchange for the New Acquiring Shares. Target will not distribute any of the Old Acquiring Shares to Target's shareholders in the Reorganization.
- d. During the five-year period ending on the date of the Reorganization: (a) neither Acquiring nor any person "related" (within the meaning of Treas. Reg. § 1.368-1(e)(4)) to Acquiring has acquired Target shares with consideration other than Acquiring shares; (b) neither Target nor any person "related" (within the meaning of Treas. Reg. § 1.368-1(e)(4), without regard to Treas. Reg. § 1.368-1(e)(4)(i)(A)) to Target will have acquired Target shares with consideration other than Acquiring shares or Target shares; and (c) other than the Distributions, no distribution will have been made with respect to the stock of Target, other than ordinary, normal, regular dividend distributions made pursuant to the historic dividend-paying practice of Target.
- e. Neither Acquiring nor any person related (within the meaning of Treas. Reg. § 1.368-1(e)(4)) to Acquiring has any plan or intention to acquire or redeem the New Acquiring Shares issued in the Reorganization, either directly or indirectly or through any transaction, agreement, or other arrangement with any other person.
- f. Acquiring has no plan or intention to sell or otherwise dispose of any of the assets of Target acquired in the Reorganization.
- g. Acquiring will acquire at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets held by Target immediately prior to the Reorganization. For purposes of this representation, amounts paid by Target to dissenters, amounts used by Target to pay its transaction-related expenses, amounts paid by Target to shareholders who receive cash or other property, and all redemptions and distributions (except for regular, normal dividends, but including the Distributions and the Residual Cash Distribution), made by Target immediately preceding the Reorganization will be included as assets of Target held immediately prior to the Reorganization.
- h. Acquiring will not assume (within the meaning of section 357(d)) liabilities of Target in the Reorganization, nor will the assets that Target transfers to Acquiring be subject to any liabilities.
- i. Target will distribute the New Acquiring Shares and the Residual Cash Distribution to its shareholders in pursuance of the Reorganization.
- j. Following the Reorganization, Acquiring will continue the historic business of Target or use a significant portion of Target's historic business assets in a business within the meaning of Treas. Reg. § 1.368-1(d).

- k. Acquiring, Target, and Target's shareholders will pay their respective expenses, if any, incurred in connection with the Reorganization.
- l. There is no intercorporate indebtedness existing between Acquiring and Target that was issued, acquired, or will be settled at a discount.
- m. No two parties to the Reorganization are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- n. The total fair market value of the assets that Target will transfer to Acquiring in the Reorganization will exceed the sum of: (i) the amount of any liabilities, if any, assumed (within the meaning of section 357(d)) by Acquiring in the exchange, (ii) the amount of any liabilities, if any, owed to Acquiring by Target, if any, that are discharged or extinguished in connection with the exchange, and (iii) the amount of cash and the fair market value of any other property (other than stock and securities permitted to be received under section 361(a) without recognition of gain) received by Target in the exchange.
- o. The fair market value of the assets of Acquiring will exceed the amount of Acquiring's liabilities immediately after the Reorganization.
- p. Target is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of section 368(a)(3)(A).

Rulings

Based solely on the information submitted and the representations set forth above, and provided that Target's shareholders will receive solely New Acquiring Shares and the Residual Cash Distribution in exchange for their Target stock in the Reorganization, we rule as follows:

1. The Reorganization will qualify as a reorganization within the meaning of section 368(a)(1)(C). Target and Acquiring each are "a party to a reorganization" within the meaning of section 368(b).
2. Target will not recognize any gain or loss on its transfer of the Old Acquiring Shares to Acquiring in exchange for the New Acquiring Shares (section 361(a)).
3. Acquiring will not recognize any gain or loss on its receipt of the Old Acquiring Shares from Target in exchange for the New Acquiring Shares (section 1032(a)).
4. Target will not recognize any gain or loss on its distribution of the New Acquiring Shares to its shareholders (section 361(c)(1)).

5. Gain, if any, will be recognized by a Target shareholder on the exchange of the shareholder's Target shares for New Acquiring Shares and a proportionate share of the Residual Cash Distribution, if any, or other property in the Reorganization, the amount of which shall not exceed the amount of cash and the fair market value of other property received in the exchange (§ 356(a)(1)). If the exchange has the effect of the distribution of a dividend (determined with the application of § 318(a)), then the amount of the gain recognized that is not in excess of the Target shareholder's ratable share of undistributed earnings and profits of Target will be treated as a dividend (§ 356(a)(2)). The determination of whether the exchange has the effect of a distribution of a dividend will be made in accordance with the principles set forth in *Commissioner v. Clark*, 489 U.S. 726 (1989). The remainder, if any, of the gain recognized will be treated as gain from the exchange of property. No loss will be recognized on the exchange (§ 356(c)).
6. A Target shareholder's basis in the New Acquiring Shares received will equal the basis of the Target shares surrendered in the exchange, decreased by the amount of any money and the fair market value of any other property received, and increased by the amount of gain, if any, which was treated as a dividend and the amount of gain (not including any portion of the gain treated as a dividend) recognized by the shareholder on the exchange (§ 358(a)(1)).
7. Each Target shareholder's holding period in the New Acquiring Shares received in the Reorganization will include the period during which the stock of Target surrendered in exchange therefor was held, provided that the Target stock is held as a capital asset by the Target shareholder on the date of the exchange (§ 1223(1)).
8. Pursuant to section 381(a) and (b), and Treas. Reg. §§ 1.381(a)-1 and 1.381(b)-1, the taxable year of Target will end upon the completion of the Reorganization, and Acquiring will succeed to and will take into account the items described in section 381(c) on the date of the Reorganization, subject to the limitations of sections 381, 381, 383, and 384, and the regulations thereunder.

Caveat

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

Procedural Statements

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Maury Passman

Maury Passman
Senior Technician Reviewer, Branch 1
Office of Associate Chief Counsel
(Corporate)